

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 MICAH D. KALENOWSKI,
5 Plaintiff,

6 vs.

7 CITY OF LAS VEGAS, *et al.*,
8 Defendants.

2:20-cv-01743-GMN-VCF

ORDER

Motion for Attorney Fees [ECF No. 62]

9
10 Defendants Brian Fortner, Las Vegas Metropolitan Police Department, M. Martin, and Jordan
11 Miller filed a motion for attorney's fees. ECF No. 62. I grant the motion in part.

12 **I. Background**

13 Plaintiff Kalenowski brings 42 U.S.C. § 1983 claims for excessive use of force in violation of the
14 Fourth and Fourteenth Amendments to the United States Constitution and for municipal liability. ECF
15 No. 25. I held a hearing and (1) granted plaintiff's motion to withdraw/amend the admissions and (2)
16 denied his motion to deem his admissions timely as moot. ECF No. 61. As part of that ruling, I allowed
17 the LVMPD defendants' counsel to file an affidavit in support of recovering attorney's fees incurred
18 from opposing plaintiff's motions. *Id.*

19 The LVMPD defendants' counsel argues that they incurred \$7,036.00 in attorney's fees to
20 respond to plaintiff's motions. ECF No. 62. The plaintiff's counsel argues that they did not act in bad
21 faith and that the fees are unreasonable. ECF No. 63. The defendants' counsel argues that bad faith is
22 not at issue and that their fees are reasonable and appropriate. ECF No. 67.

23 **II. Discussion**

24 "The Ninth Circuit has expressly noted that the movant or his attorney may be required to pay a
25 substantial monetary fine and/or the opposing party's increased costs and expenses arising from

1 admissions being withdrawn.” *Martinez v. Smith's Food & Drug Ctr., Inc.*, No. 2:21-cv-01199-GMN-
2 NJK, 2022 U.S. Dist. LEXIS 106621, at 16 (D. Nev. June 15, 2022) (cleaned up), citing to *Hadley v.*
3 *United States*, 45 F.3d 1345, 1350 (9th Cir. 1995) “When a court [allows] withdrawal of admissions, it
4 may impose alternative sanctions related to that relief.” *Id.* “Such monetary relief may include the
5 expenses associated with opposing a motion to withdraw[.]” *Martinez*, supra, at 16.

6 I have reviewed defendants’ counsel’s affidavit. Bad faith is not at issue here. Plaintiff’s counsel
7 erred when they did not timely comply with the deadline to respond to the request for admissions.
8 Plaintiff’s counsels’ error caused some prejudice to the defendants, such as some of the time the
9 defendants spent having to respond to plaintiff’s motions. On balance, I granted plaintiff’s motion to
10 withdraw the admissions for all the reasons stated on the record at the hearing. Looking at the totality
11 of the circumstances, I order plaintiff’s counsel to pay \$3,000 to the defendants’ counsel.

12 Accordingly,

13 I ORDER that the defendants’ motion for attorney’s fees (ECF No. 62) is GRANTED IN PART.

14 I FURTHER ORDER that plaintiff’s counsel has until Monday, November 7, 2022, to pay
15 \$3,000 to the defendants’ counsel.

16 DATED this 24th day of October 2022.

17 
18 CAM FERENBACH
19 UNITED STATES MAGISTRATE JUDGE
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